

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

**June 15, 2001**

<b>IN RE:</b>	)	
	)	
<b>DOCKET TO ESTABLISH</b>	)	<b>DOCKET NO.</b>
<b>GENERIC PERFORMANCE</b>	)	<b>01-00193</b>
<b>MEASUREMENTS, BENCHMARKS</b>	)	
<b>AND ENFORCEMENT</b>	)	
<b>MECHANISMS FOR BELL SOUTH</b>	)	
<b>TELECOMMUNICATIONS, INC.</b>	)	

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**INITIAL ORDER ON DISCOVERY DISPUTES**

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**BACKGROUND**

At a regularly scheduled Authority Conference held on February 21, 2001, the Directors opened this docket to establish a common set of performance measurements, benchmarks and enforcement mechanisms to ensure that BellSouth Telecommunications, Inc. ("BellSouth") provides nondiscriminatory access to its network elements as required by the Telecommunications Act of 1996. On March 1, 2001, the Authority issued a Notice of Filing in which interested parties were invited to submit comments.

On May 1, 2001, a Pre-Hearing Conference was held during which the Pre-Hearing Officer with the assistance of the parties established a procedural schedule.<sup>1</sup> Pursuant to this schedule, discovery requests were to be filed by May 7, 2001; objections to discovery requests

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<sup>1</sup> See *Order Reflecting Action Taken at May 1, 2001 Pre-Hearing Conference*, pp. 4-5 (May 10, 2001).

were to be filed by May 18, 2001; responses to discovery objections were to be filed by May 23, 2001; and responses to discovery requests were to be filed by June 18, 2001.

Accordingly, AT&T Communications of the South Central States, Inc. ("AT&T") and ATM/Discount Communications, Inc. ("ATM/Discount") filed data requests on May 7, 2001. BellSouth filed its objections to those data requests on May 18, 2001.

### **BELLSOUTH'S SPECIFIC OBJECTIONS TO THE DATA REQUESTS**

With respect to AT&T data request nos. 44 and 45, BellSouth states that it does not retain this information at all, but that it is possible that such information exists. Nonetheless, BellSouth argues that identifying and compiling such information will be done manually. Thus, BellSouth argues this data request is unduly burdensome.

BellSouth objects to AT&T data request no. 49 on the ground that this interrogatory is unduly burdensome and oppressive. BellSouth states that it does not mechanically record, on a historical basis, whether the service order requests submitted by CLECs were processed exactly as submitted or whether some change was necessitated. Thus, according to BellSouth, the only way to ascertain the answer to this question would be to find the service order request submitted by the CLEC and then compare it to the service order that was issued, which would have to be done manually, if it could be done at all, for the period requested.

BellSouth contends that collecting data in response to AT&T data request no. 62 would be burdensome and oppressive and that it is not clear that all of the data exists for the time period and items requested. BellSouth argues that it does not maintain its records in the ordinary course of business in a manner that allows the collection of the data in the detail requested for the time period requested. It further claims that if all of the information were available, deriving it would require a time-consuming, expensive, manually intensive effort that it could not complete before

the date scheduled for the hearing. BellSouth asserts, however, that it is trying to collect available data that it believes to be responsive to the request, and it states that it will provide such data at the appropriate time.

BellSouth objects to ATM/Discount data request no. 2 on the ground that the question is unduly broad because it spans 16 months. It also argues that the question is unduly burdensome because it will impose needless burden and expense.

BellSouth contends that ATM/Discount data request no. 3 is unduly broad and burdensome in its scope because it seeks information spanning over 16 months. It also objects because the discovery request seeks information on complaints by customers other than ATM/Discount. BellSouth also states that such communications contain information such as billing or business plan information that is kept confidential by competing local exchange carriers ("CLECs").

### **FINDINGS AND CONCLUSIONS**

With respect to AT&T data request no. 44, the Pre-Hearing Officer finds that BellSouth should be able to provide a list of all hot cuts for the state of Tennessee. Providing this response is likely to require BellSouth to examine its engineering records for each hot cut to determine which hot cuts involved Integrated Digital Loop Carrier ("IDLC"). This effort may be significant, but the importance of the data warrants the expense and time of retrieving it. Therefore, the Pre-Hearing Officer concludes that BellSouth should be required to provide three (3) months of data by month (December 2000 through February 2001) to include the percentage of coordinated cutovers that involved IDLC.

With respect to AT&T data request no. 45, the Pre-Hearing Officer finds that while BellSouth is compiling the information to answer request no. 44, it should be able to retrieve the

requested and actual start time. Thus, this data request should impose a minimal, additional burden to BellSouth. Any delays in coordinated conversions result in lost time for the CLEC, and may cause customer dissatisfaction if the CLEC is unable to meet its committed due date. The information derived from this data request will aid the Authority's determination of the need for a separate measurement of hot cut timeliness for coordinated customer conversions involving IDLC. Any significant problems should be apparent from three months of data, and limiting the data to three months may prevent delays in moving this docket forward. Thus, the Pre-Hearing Officer concludes that BellSouth shall be required to provide the requested data for the same time period as required for AT&T data request no. 44.

Regarding AT&T data request no. 49, the Pre-Hearing Officer finds merit in BellSouth's argument that it cannot track every change to each CLEC order. If CLECs experience problems with service order accuracy, then they can submit evidence of their experiences into the docket. Many CLEC orders to BellSouth fall out for manual handling, which requires a BellSouth representative in one of its Local Customer Service Centers (LCSCs) to retype the service order submitted by the CLEC into one of BellSouth's order processing systems. Therefore, it is possible that the order will not be entered into BellSouth's systems exactly as it was submitted by the CLEC. Alternatively, the CLECs could track specific instances in which they believe that BellSouth made errors, and then ask BellSouth to analyze the cause of these failures. For these reasons, the Pre-Hearing Officer concludes that BellSouth's objection to this data request should be granted.

With respect to AT&T data request no. 62, the Pre-Hearing Officer finds that the measurements that AT&T requests may help the Authority determine whether it should adopt them in this docket. Two (2) months of data should be sufficient to measure the level of service

that BellSouth provides to its retail arm and that which it provides to CLECs, and limiting the data collection to two (2) months should not be unduly burdensome to BellSouth. Therefore, the Pre-Hearing Officer concludes that BellSouth should be required to provide the information requested for the two-month period of January and February 2001 instead of the five-month period of October 2000 through February 2001 as requested by AT&T.

With respect to ATM/Discount data request no. 2, the Pre-Hearing Officer finds that this is an important issue in this docket, because the Authority will need to determine whether BellSouth's proposed aggregate service quality measurement ("SQM") is sufficient to measure operational support system ("OSS") availability. The Pre-Hearing Officer also finds that data for the most recent six months should be sufficient to determine whether local exchange navigation system ("LENS") consistently provides CLECs with an acceptable level of service. The Pre-Hearing Officer concludes that BellSouth should be required to provide the information requested in ATM/Discount data request no. 2 for the most recent six (6) months instead of the sixteen (16) months requested by ATM/Discount. Further, BellSouth should derive the meaning of the term "operating properly" from the definition of "OSS-2 Interface Availability (Pre-Ordering)" as "Percent of time OSS interface is functionally available compared to scheduled availability . . ." contained in the SQM.

Regarding ATM/Discount data request no. 3, the Pre-Hearing Officer finds that a record of complaints relating to LENS and the LCSC could demonstrate a pattern of dissatisfaction with BellSouth's service to CLECs. The CLECs, however, could raise any critical issues relating to performance of LENS or the LCSC. Further, to respond to ATM/Discount's interrogatory, BellSouth would have to provide documentation for every telephone call. In addition, ATM/Discount's data request does not specifically define the parameters associated with the

term "complaint." The Pre-Hearing Officer finds that this data request is unduly broad and concludes that BellSouth's objection to this data request should be granted.

In light of the Pre-Hearing Officer's decisions, the previously ordered deadlines for discovery responses should be modified without disturbing the previously scheduled hearing dates. The Pre-Hearing Officer concludes that the following revised schedule will achieve this objective:

- Responses to discovery requests shall be filed with the Authority and served on all parties no later than 4:30 p.m., Monday, June 25, 2001. Responses to discovery requests shall be served by hand-delivery or facsimile on the date of filing.
- Pre-filed direct testimony shall be filed with the Authority and served on all parties no later than 4:30 p.m., Monday, July 16, 2001. Pre-filed direct testimony shall be served by hand-delivery or facsimile on the date of filing.
- Pre-filed rebuttal testimony shall be filed with the Authority and served on all parties no later than 4:30 p.m., Friday, August 10, 2001. Pre-filed rebuttal testimony shall be served by hand-delivery or facsimile on the date of filing.
- As previously ordered, the hearing is set for 9:00 a.m., Monday, August 20, through Friday, August 24, 2001.

**IT IS THEREFORE ORDERED THAT:**

1. Regarding AT&T data request no. 44, BellSouth shall provide three months of data by month (December 2000 through February 2001) to include the percentage of coordinated cutovers that involved IDLC.

2. Regarding AT&T data request no. 45, BellSouth shall provide the requested data for the time period of December 2000 through February 2001.

3. Regarding AT&T data request no. 49, BellSouth's objection is sustained.

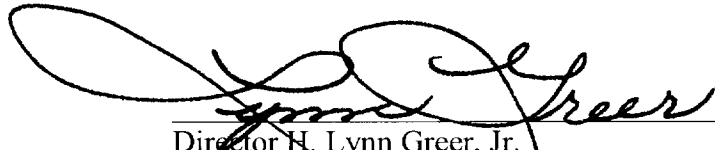
4. Regarding AT&T data request no. 62, BellSouth shall provide the information requested for the two-month period of January 2001 and February 2001.

5. Regarding ATM/Discount data request no. 2, BellSouth shall provide the information requested in data request no. 2 for the most recent six months.

6. Regarding ATM/Discount data request no. 2, BellSouth shall derive the meaning of the term "operating properly" from the definition contained in its SQMs in reference to "OSS-2 Interface Availability (Pre-Ordering)."

7. Regarding ATM/Discount data request no. 3, BellSouth's objection is granted.

8. The filing deadlines for responses to discovery requests as well as pre-filed direct and rebuttal testimony, as set forth in the May 10, 2001, Pre-Hearing Officer's Order, are modified as set forth herein.



Director H. Lynn Greer, Jr.  
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary